

BEFORE THE  
**Federal Communications Commission**  
 WASHINGTON, DC 20554

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MAY 15 1998

In the Matter of )

Communications Assistance for )  
 Law Enforcement Act )

CC Docket No. 97-213

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF  
 PRIMECO PERSONAL COMMUNICATIONS, L.P.  
 REGARDING EXTENSION OF THE CALEA COMPLIANCE DATE**

PrimeCo Personal Communications, L.P. ("PrimeCo") hereby replies to the comments filed jointly by the U.S. Department of Justice and the Federal Bureau of Investigation (jointly "FBI") in the above captioned proceeding.<sup>1</sup>

The FBI stands alone in opposing a "blanket" extension of the compliance deadline for the assistance capability requirements in the Communications Assistance for Law Enforcement Act ("CALEA").<sup>2</sup> All other commenters, including both telecommunications carriers subject to CALEA and the equipment manufacturers who will develop the CALEA-compliant technology, urge the Commission to extend the October 25, 1998, CALEA compliance deadline.<sup>3</sup>

<sup>1</sup> Federal Bureau of Investigation and U.S. Department of Justice, Comments Regarding the Commission's Authority to Extend the October 25, 1998 Compliance Date, CC Docket No. 97-213 (May 8, 1998) ("FBI Comments").

<sup>2</sup> See *Public Notice*, "Communications Assistance for Law Enforcement Act, CC Docket No. 97-213," DA 98-762 (April 20, 1998).

<sup>3</sup> See, e.g., Comments filed by: Aliant Communications; ALLTEL Communications, Inc.; Association for Local Telecommunications Services; Ameritech Operating Companies and Ameritech Mobile Communications; AT&T Corp.; Bell Atlantic Mobile, Inc.; BellSouth Corp.; Cellular Telecommunications Industry Association; Centennial Cellular Corp.; CenturyTel Wireless, Inc.; GTE Service Corp.; ICG Telecom Group, Inc.; Liberty Cellular, Inc. *et al.*; National Telephone Cooperative Association; Nextel Communications, Inc.; Northern Telecom, Inc.; Omnipoint Communications, Inc.; Organization for

PrimeCo submits that even a cursory review of the referenced comments reveals that the arguments in favor of extending the CALEA deadline are fully supported by fact, law and common sense. As the commenters supporting extension point out, extensions of the CALEA deadline are expressly authorized by the statute, if the Commission “determines that compliance . . . is not reasonably achievable through application of technology available within the compliance deadline.”<sup>4</sup> Further, the carriers and vendors demonstrate conclusively that this statutory standard is satisfied in this case. Simply put, the technology necessary to implement CALEA’s requirements does not now exist and cannot be developed and deployed by the October 25 deadline. Finally, the blanket extension proposed by the carriers and vendors is simply the most practical and efficient mechanism for the Commission to address this problem. In the absence of a blanket extension, the Commission, each subject carrier, and their equipment vendors, will have to spend significant resources in the preparation, filing, and processing of individual requests for extension.<sup>5</sup>

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<sup>3</sup> (...continued)  
the Promotion and Advancement of Small Telecommunications Companies; Paging Network, Inc.; Personal Communications Industry Association; Powertel, Inc.; Rural Cellular Association; SBC Communications, Inc.; Southern Communications Services, Inc.; Telecommunications Industry Association; 360 Communications Company; United States Cellular Corp.; United States Telephone Association; and U S WEST, Inc. Privacy groups also support an extension, but for different reasons. *See* Comments filed by: the Electronic Privacy Information Center; the Electronic Frontier Foundation; and Center for Democracy and Technology.

<sup>4</sup> 47 U.S.C. § 1006(c)(2).

<sup>5</sup> In this regard, commenters demonstrated that the Commission’s authority to grant a blanket extension is also based on the Commission’s Section 107(b)(5) authority to “provide a reasonable time and conditions for compliance with and the transition to any new standard.” *See, e.g.,* CTIA Comments at 13-16; Bell Atlantic Mobile Comments at 3-6. Further, PCIA notes that Section 4(i) of the Communications Act authorizes the Commission to “perform any and all acts . . . not inconsistent with [the Communications Act], as may be necessary in the execution of its functions.” PCIA Comments at 13.

The FBI's position, on the other hand, is without merit and is unsupportable on the record before the Commission. For example, the FBI claims that the parties seeking a "blanket" extension of the CALEA deadline have "failed to establish, beyond bald assertions, the actual need for an industry-wide extension."<sup>6</sup> PrimeCo submits that this argument is patently ridiculous, particularly in light of the numerous filings by equipment vendors, which show that the vendors will be unable to make CALEA-compliant modifications available to carriers by the October, 1998 deadline.<sup>7</sup>

The FBI goes on to mischaracterize the arguments supporting an industry-wide extension as little more than bare assertions that "such an action is necessary because the prospect of the Commission eventually issuing a rule that will supervene J-STD-025 has

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<sup>5</sup> (...continued)

Granting of a blanket extension is clearly consistent with the purposes of both the Communications Act and CALEA and is permissible under Section 4(i). *Id.*

<sup>6</sup> FBI Comments at 2 ¶ 4. As PrimeCo pointed out in its Comments, however, even the law enforcement agencies have previously recognized the fact that CALEA-compliant technology cannot be deployed by the CALEA deadline, at least as to those carriers providing wireline, cellular, and broadband PCS services covered by the industry implementing standard, J-STD-025. *See* PrimeCo Comments at 4. Thus, as part of a recent *ex parte* presentation, the FBI advised the Commission that "the [CALEA] compliance date *should be extended* for a period of 18 months after [its] Order is issued in this proceeding." Correspondence from David Yarbrough, FBI, to Magalie Salas, FCC Secretary, CC Docket No. 97-213, at 2 (April 14, 1998) (emphasis supplied). Moreover, the Attorney General advised Congress that manufacturers will require at least 18 months *after* the Commission order resolving the pending deficiency petitions to build compliant equipment. *See* Testimony of the Attorney General before the House Appropriates Subcommittee for Commerce, State, Justice, the Judiciary and Related Agencies (Feb. 26, 1998).

<sup>7</sup> *See, e.g.,* AirTouch Communications and Motorola, Joint Petition for an Extension of the CALEA Assistance Capability Compliance Date (May 5, 1998); AT&T Wireless Services, Lucent Technologies, and Ericsson, Petition for Extension of Compliance Date (March 30, 1998); Nortel Comments, CC Docket No. 97-213 (May 8, 1998).

rendered the safe harbor method of compliance ‘uncertain.’”<sup>8</sup> In the FBI’s view, however, the current uncertainty over the industry standard provides no basis upon which to extend the compliance date:

Congress did not make the effective date of § 103 and the industry’s compliance obligation dependant upon the ‘finality’ — or even the existence — of such safe harbor standards.<sup>9</sup>

Moreover, the FBI believes that, despite the current uncertainty, J-STD-025 provides a safe harbor for carriers today and until the Commission issues an order resolving the challenges to that standard.<sup>10</sup>

This argument is merely a “red herring” and ignores both the express language of Section 107(c) of CALEA and the substance of the record currently before the Commission. The carriers and vendors supporting an extension have demonstrated that Section 107(c) mandates an extension of the CALEA compliance deadline if the Commission determines that compliant technology is not available within the compliance period.<sup>11</sup> Further, these parties have shown conclusively that CALEA-compliant technology will not be available within the compliance deadline. Therefore, an extension of the compliance deadline is warranted under CALEA Section 107. Contrary to the FBI’s position, the current uncertainties regarding J-STD-025 are

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<sup>8</sup> FBI Comments at 14 ¶ 26.

<sup>9</sup> *Id.* at 6 ¶ 9.

<sup>10</sup> *Id.* at 15 ¶ 26. While it is not relevant to the extension issue, PrimeCo notes that the FBI’s “assurance” regarding the safe harbor rings hollow given that the FBI has filed with the Commission a deficiency challenge to J-STD-025 and requested Commission action by no later than September, 1998.

<sup>11</sup> 47 U.S.C. § 107(c).

merely one among many reasons why the necessary technology will not be available by October 25, 1998.<sup>12</sup>

The FBI grudgingly recognizes that there may be a need for extensions of the compliance deadline in individual cases, but argues that the Commission need not be faced with a wave of individual extension requests. In that regard, the FBI assures the Commission that the FBI can provide any needed relief in the form of “federal enforcement forbearance agreements” to be implemented on “a platform-by-platform (or solution-by-solution) basis.”<sup>13</sup> As envisioned by the FBI, these forbearance agreements, “will assure manufacturers and carriers that they will not be subject to federal enforcement actions . . . in return for [their] assurance that they will develop and use equipment meeting the assistance capability requirements of § 103.”<sup>14</sup>

PrimeCo submits that this proposal is woefully inadequate and is directly contrary to the regulatory structure set up under CALEA. For example, even the FBI concedes that the forbearance agreements would not protect carriers from enforcement actions filed by state law

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<sup>12</sup> PrimeCo’s April 21 Petition for Extension of the CALEA deadline demonstrates that delays and disputes regarding the publication of the final capacity notice and the capability standard, have rendered it impossible for PrimeCo to obtain CALEA-compliant modifications from its vendors in time to meet the current October 25, 1998 deadline. PrimeCo Petition for Extension at 2-11 (April 21, 1998). More specifically, PrimeCo showed that the Congressionally-designed CALEA implementation plan failed to work primarily because: (a) the FBI did not timely publish its capacity requirements; (b) the FBI has impeded the industry’s ability to publish standards implementing the capability requirements; and (c) the FBI delayed raising with the Commission its concerns that the industry standard was deficient because it did not include certain additional “punch list” capabilities. *Id.*

<sup>13</sup> See FBI Comments at 19 ¶ 33.

<sup>14</sup> *Id.* at 17 ¶ 31.

enforcement agencies.<sup>15</sup> An extension granted by the Commission would not have this same flaw, and is the procedure provided for in CALEA.

Further, the procedures proposed by the FBI directly conflict with the terms of CALEA. CALEA specifies that a “telecommunications carrier” “may petition the Commission for one or more extensions of the deadline for complying with the assistance capability requirements.”<sup>16</sup> The Act further provides that an extension should be granted “if the Commission determines that compliance with the assistance capability requirements . . . is not reasonably achievable through the application of technology available within the compliance period.”<sup>17</sup> Thus, CALEA contemplates that issues relating to compliance deadline extensions will be resolved between telecommunications carriers and the Commission. Similarly, CALEA authorizes the Commission to determine the scope of the assistance capability requirements.<sup>18</sup>

The FBI’s proposal, however, would sidestep the procedures expressly provided for in the statute. In essence, the FBI’s proposals would appear to remove both telecommunications carriers and the Commission from the extension and standards process through the implementation of forbearance agreements between the FBI and equipment vendors. In other words, the forbearance process would be controlled by the FBI with no opportunity for input from the Commission. While this situation may be to the FBI’s liking, it would directly conflict with the terms of CALEA.

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<sup>15</sup> See *id.* at 17 n.3.

<sup>16</sup> 47 U.S.C. § 1006(c)(1).

<sup>17</sup> *Id.* § 1006(c)(2).

<sup>18</sup> *Id.* § 1006

Finally, the FBI claims that grant of an industry-wide extension “would be disastrous from the perspective of law enforcement’s ability to protect the public from criminal activity.”<sup>19</sup> Although it has dramatic appeal, this concern is exaggerated and appears to be yet another red herring.

As CTIA points out, an industry-wide extension will simply maintain the *status quo ante* and will not hamper law enforcement’s existing electronic surveillance capabilities:

Granting an extension does not mean that carriers will not have the ability to perform wiretaps during the extension period. All carriers currently provide technical assistance to law enforcement to conduct lawfully authorized wiretaps, whether digital or analogue, wireless or wireline. The vast majority of these wiretaps are carried out without impediment. CALEA solutions will result in *advanced* features being available for wiretapping in addition to the basic surveillance already being conducted.<sup>20</sup>

Further, it is not clear that the FBI could even use CALEA-compliant technology, if such solutions were available. As TIA states in its comments:

[T]he FBI has not yet identified a contractor to develop the collection equipment necessary for law enforcement to receive and process the information that will be provided under [CALEA]. . . . Thus, even if a carrier were poised to install CALEA-compliant equipment there would be no means for testing the equipment or even for law enforcement to receive any information once the equipment is installed.<sup>21</sup>

In light of the above, PrimeCo submits that the FBI’s claims that an extension will impede law enforcement efforts are overstated.

For the foregoing reasons, PrimeCo urges the Commission to grant expeditiously a two-year extension applicable to all telecommunications carriers of the deadline for CALEA’s

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<sup>19</sup> FBI Comments at 11 ¶ 21.

<sup>20</sup> CTIA Comments at 2 (emphasis in original).

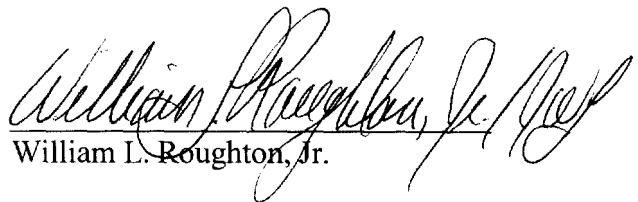
<sup>21</sup> TIA Comments at 12-13.

assistance capability requirements. If, however, the Commission determines that it cannot grant blanket relief, then PrimeCo respectfully requests the Commission to grant its individual petition for extension filed on April 21, 1998. Even the FBI acknowledges that action on individual petitions is within the Commission's statutory authority. Therefore, PrimeCo submits that the Commission should act on its petition promptly; there is no basis in the Communications Act for the Commission to rely on the deficient, alternative procedure proposed by the FBI.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Elizabeth S. Hines, hereby certify that I have on this 15th day of May, 1998 caused a copy of the foregoing Reply Comments to be served by first class U.S. mail, postage prepaid, to the following:

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